

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO**

MATTHEW DICKSON, on behalf of himself and others similarly situated,	:	Case No. 5:18-cv-182-JRA
	:	
	:	Judge Adams
Plaintiff,	:	Magistrate Judge Henderson
	:	
v.	:	
	:	
DIRECT ENERGY, LP, et al.,	:	
	:	
Defendants.	:	

PLAINTIFF’S MOTION FOR LEAVE TO FILE SUR-REPLY

Ten minutes before filing its Reply in Support of Motion for Class Certification, Direct Energy made a new production of nearly 2,000 pages of documents. None of those documents demonstrate that a single class member consented to be called, but nonetheless, Direct Energy argues for the first time in its reply in support of its own supplemental brief opposing class certification that those 2,000 documents preclude class certification. Despite the fact that Direct Energy has long possessed these documents, in its previous three briefs (including a sur-reply it has yet to be granted leave to file) opposing class certification, Direct Energy made no mention of them. But now, Direct Energy asserts that they render class certification impossible. Plaintiff is mindful of not creating unnecessary work for the Court, but in fairness, Plaintiff should be allowed to address this newly produced evidence and Direct Energy’s highly misleading assertions that it has anything to do with the RVM campaign at issue or suggests in any way that a single class member consented to be called.

Plaintiff therefore requests leave to file a brief sur-reply for the limited purpose of addressing Direct Energy’s new argument that its new production of documents precludes class certification. Plaintiff will not address Direct Energy’s other arguments, which he has already

fully addressed in his other briefs in support of class certification. Plaintiff's proposed sur-reply is attached hereto as Exhibit 1.

Respectfully submitted,

/s/ Brian K. Murphy

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CERTIFICATE OF SERVICE

I hereby certify that on February 9, 2022, I served the foregoing through the Court's CM/ECF system, which sent notice to all counsel of record.

/s/ Brian K. Murphy
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